IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ACCU-SPEC ELECTRONIC SERVICES, INC., Plaintiff	)	
v.	)	CIVIL ACTION NO. 03-394 ERIE
CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC., Defendants	)	

HEARING ON DEFENDANT'S CENTRAL TRANSPORT INTERNATIONAL, INC.'S
MOTION FOR SUMMARY JUDGMENT

Proceedings held before the HONORABLE SEAN J. McLAUGHLIN, U.S. District Judge, in Courtroom C, U.S. Courthouse, Erie, Pennsylvania, on Wednesday, December 8, 2004.

APPEARANCES:

THOMAS A. PENDLETON, Esquire, appearing on behalf of the Plaintiff.

JEFFREY D. COHEN, Esquire, appearing on behalf of Defendant Central Transport International, Inc.

W. JOHN KNOX, Esquire, appearing on behalf of Defendant Logistics Plus, Inc.

Ronald J. Bench, RMR - Official Court Reporter

EXHIBIT
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if I could look at my file very quickly.

THE COURT: All right.

MR. PENDLETON: The authority begins with the case of Owner-Operator Independent Drivers Association, Inc. v. New Prime, Inc.

THE COURT: The cite?

MR. PENDLETON: 192 F.3d 778.

THE COURT: What does it stand for?

MR. PENDLETON: It stands for the proposition that under Section 14704(a)(2) authorizes private parties to sue for damages for carrier conduct in violation of the regulations promulgated under this part. Meaning the part dealing with motor carrier conduct.

THE COURT: All right. Now, when you say carrier conduct, do you mean like negligence which causes damage to something?

MR. PENDLETON: Well, the regulations which are issued under this part, deal in pertinent part with carrier investigation of claims.

THE COURT: So, for instance, is your theory that Central was deficient in its manner or method of investigating the loss, therefore, you're entitled to attorney's fees?

MR. PENDLETON: Absolutely.

THE COURT: Is that the essence of the claim?

MR. PENDLETON: Yes.

THE COURT: How is that, just assuming that that theoretically could be, how does one ferret out those facts and who is the fact finder, do you have to have a jury trial on that or a non-jury trial on that. First of all, I don't think he accepts the proposition you get fees at all, at a minimum. You would say, Mr. Cohen, I presume, that you didn't do anything wrong in the manner or method in which you investigated the loss?

MR. COHEN: Absolutely, yes.

THE COURT: That comes as no surprise, be that as it may. How do I resolve that claim -- if there's disputed issues of material fact?

MR. PENDLETON: I know that there are jury trials under the Carmack Amendment. I don't know because this amendment --

THE COURT: Probably has never been done before.

MR. PENDLETON: Well, this particular amendment to the ICC, I'm sorry, which abolished the Interstate Commerce Commission, was only six years ago. So the reason why there is a private cause of action, as explained by the New Prime case, is because there isn't another body, such as the ICC, any longer to address these issues of when a carrier does not properly investigate a claim.

THE COURT: Let's go back to the main point.

MR. PENDLETON: Sure. If I could make one more point regarding another case.

THE COURT: All right.

MR. PENDLETON: It's the case of Owner-Operator Independent Drivers --

THE COURT: I live by citations?

MR. PENDLETON: It's 2004 WL 115155 (N.D.of IL. 2004).

THE COURT: What does it say?

MR. PENDLETON: The same issue regarding a private cause of action --

THE COURT: For attorney's fees?

MR. PENDLETON: Was addressed in detail. And a blanket motion to dismiss was filed, it was denied, including the issue of attorney's fees, that there was no order dismissing the attorney's fees.

THE COURT: Was that actually joined as an issue, the propriety of, did it just slip in -- are you saying it supports your position by silence?

MR. PENDLETON: I think it supports certainly the position by silence because if there was no claim for attorney's fees, the court could have dismissed the claim on the Rule 12(b)(6) motion.

THE COURT: What if they didn't move to dismiss the claim -- who knows, all right, I got your point. Let's go to the main point, well, another point. Where do you fall on this